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DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

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Case Number: TSO-0040

This decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ^{1/} The local Department of Energy Office (the DOE Office) suspended the Individual's access authorization under the provisions of Part 710. This decision considers whether, on the basis of the evidence and testimony in this proceeding, the Individual's access authorization should be restored. For the reasons stated below, the Individual's access authorization should not be restored.

I. BACKGROUND

The present case concerns an Individual diagnosed with Alcohol Dependence by a DOE Consultant Psychiatrist (the Psychiatrist). The Individual disagrees with this diagnosis. The events leading to this proceeding began when DOE officials received a request to upgrade the Individual's access authorization. The resulting reinvestigation raised some concerns about the Individual's alcohol consumption. On August 8, 2002, the Psychiatrist conducted a forensic psychiatric examination of the Individual. In addition to conducting this examination, the Psychiatrist reviewed selected portions of

^{1/} Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

the Individual's security file and selected medical records. On August 9, 2002, the Psychiatrist issued a report in which he stated that the Individual was alcohol dependent. The Psychiatrist further opined that the Individual was not sufficiently rehabilitated and reformed to resolve the security concerns raised by his alcohol dependence. The August 9, 2002 Report indicates that the Psychiatrist's diagnosis was based upon the following factors:

- (1) the Individual reported to the Psychiatrist that his first wife had complained about the Individual's drinking,
- (2) the Individual reported to the Psychiatrist that he would often drink up to 30 beers a day in the 1980's,
- (3) the Individual was arrested for DWI in 1994,
- (4) the Individual reported to the Psychiatrist that he currently consumes seven or eight beers a day,
- (5) the Individual reported to the Psychiatrist that he would have to consume a case of beer to become intoxicated,
- (6) the Individual reported to the Psychiatrist that he consumed 100 beers during a five day hunting trip,
- (7) the Individual continues to drink even though he is aware that it might worsen his gout,
- (8) the Individual reported that he "had been driving with a beer between his legs" for 40 years, and
- (9) laboratory tests ordered by the Psychiatrist revealed that the Individual's Gamma GT liver enzyme was elevated.

Psychiatrist's Report of Examination at 2- 5. The Psychiatrist further noted that

There is no adequate evidence of rehabilitation or reformation. [The Individual] continues to drink excessively. He has never entered into a voluntary treatment for alcohol abuse and feels no need to do so.

Psychiatrist's Report of Examination at 8. An administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The DOE Office then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter specifies two types of derogatory information described in 10 C.F.R. § 710.8(h) and (j). The Notification Letter alleges that the Individual has "an illness or mental condition of a nature which . . . causes, or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). In addition, the Notification Letter alleges that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer.

At the hearing, the DOE Office presented three witnesses: the Psychiatrist, a representative of the Individual's employer and a DOE Personnel Security Specialist. The Individual presented seven witnesses: five friends and co-workers and his two favorite bartenders. The Individual also testified on his own behalf. *See* Transcript of Hearing, Case No. TSO-0040 (hereinafter cited as "Tr.").

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

A reliable diagnosis of alcohol dependence raises significant security concerns under Criteria J and H. In the present case, a Psychiatrist has diagnosed the Individual with alcohol dependence and has provided a thorough and convincing explanation of his reasons for concluding that the Individual is alcohol dependent. The Individual, however, disputes the Psychiatrist's conclusion that he is alcohol dependent. The Individual has attempted to challenge the Psychiatrist's diagnosis by (1) claiming that he overstated his consumption of alcohol in an attempt to ensure full disclosure during his security investigation, (2) having a number of his friends and co-workers testify that they had never observed him drinking to excess, (3) having two bartender/liquor store operators testify about the amount of alcohol they have sold him, and (4) claiming that his ex-wife's complaints about his drinking were not valid. After considering the evidence presented by the Individual and the Psychiatrist's Report and testimony, I agree with the Psychiatrist's diagnosis of alcohol dependence.

The Individual contended that he overstated his consumption of alcohol in order to avoid prosecution for deliberately providing false information to the government. Tr. at 14, 146. It is difficult to assign much credibility to this assertion. First, it appears to be internally inconsistent. In effect, the Individual is saying he deliberately provided false information in order to avoid providing false

information. Second, this contention is made more difficult to believe by the Individual's tendency to provide contradictory testimony while on the stand at the hearing. For example, at the hearing I asked the Individual "Have you ever been intoxicated?" The Individual responded by stating, "Not that I know of. I don't get drunk." Tr. at 38. I then asked the Individual, "You weren't intoxicated that day of the DWI?" He replied "No, sir, no way." *Id.* After he testified that a Breathalyzer test taken at the scene of the DWI indicated that he had a blood alcohol level of .13, I asked the Individual "[S]o you're telling me you've never been intoxicated, and you're sure?" The Individual replied "That's all in somebody else's mind. It don't bother me." *Id.* A few minutes later I asked "Have you ever been drunk?" The Individual replied "Yes." Tr. at 40.

The Individual presented the testimony of five friends and co-workers. The testimony provided by these men conclusively establishes that the Individual does not use alcohol at work and that the Individual's consumption of alcohol has not negatively affected his work performance. One of these witnesses is also a neighbor of the Individual in a very small community. This neighbor testified that the Individual is not known as a person with a drinking problem in the community, whose inhabitants tend to share information about each other. Tr. at 122-23. However, the Individual's ability to prevent his drinking from interfering with his work performance does not serve to establish that he is not alcohol dependent. Nor does the absence of a reputation for excessive drinking preclude alcohol dependence. It is also notable that these witnesses had spent very little time with the Individual outside of the work environment.

The Individual also called his two favorite bartenders/liquor store operators to testify for him. ^{2/} These two witnesses operate the only two establishments that sell or serve alcohol in the small town in which the Individual resides. Both bartenders/liquor store operators testified that they had never had any indication that the Individual had any problem with alcohol. Both bartenders/liquor store operators testified that they had often observed the Individual using alcohol and had never observed the Individual drinking to excess. Tr. at 98-99, 105-6. The bartenders/liquor store operators' testimony indicated that the Individual consistently purchases about a twelve-pack a week from each of them. Tr. at 94, 98, 113. The bartenders/liquor store operators' testimony was not particularly helpful to the Individual. While the bartenders/liquor store operators' testimony established that the Individual does not drink excessively when he visits these establishments, it does not shed any useful light on how much alcohol from other establishments the Individual purchases or consumes.

The Individual also provided some very personal testimony about his relationship with his first wife. The Individual testified that his first wife's father had been an alcoholic and that his ex-father-in-law's actions under the influence of alcohol had traumatized the Individual's first wife. Tr. at 35, 175-79. According to the Individual, this led his first wife to object to his consumption of alcohol, not his level of drinking itself. *Id.* Even if this testimony is entirely accurate, there is still a great deal of other evidence in the record supporting the Psychiatrist's conclusion that the Individual is alcohol dependent. For example, On June 1, 2001, the Individual submitted a DOE security form entitled "Questionnaire for Sensitive Positions (QSP). In this QSP, the Individual reported that he had been

^{2/} One of these bartenders/liquor store operators is also the sister of the Individual's present wife.

arrested for driving while under the influence of alcohol in August, 1984. DOE Exhibit 9 at 8. The Psychiatrist testified that the Individual made several important admissions to him during his examination of the Individual. Specifically, the Psychiatrist testified that the Individual admitted that he had developed a tolerance to alcohol, Tr. at 155-56, had at one point consumed 30 beers a day, Tr. at 156, continued to drink despite being warned, by a medical professional, that it might worsen his gout, Tr. at 157, and continued to drink and drive even after his DWI arrest, Tr. at 158.

One witness testified that he had been an active member of Alcoholics Anonymous (AA) for 13 years. Tr. at 79. This witness testified that he had worked with the Individual for years and never suspected that the Individual had a drinking problem. Tr. at 80-87. This witness testified, rather convincingly, that he thought he would be able to tell if someone he knew as well as the Individual had a drinking problem. Tr. at 86. This testimony supports the Individual's contention that he is not alcohol dependent. However, the expert opinion of the Psychiatrist and the other evidence in the record outweighs this testimony and I remain convinced that the Psychiatrist properly diagnosed the Individual as alcohol dependent.

The testimony of the Individual and his witnesses has not persuaded me that he is not alcohol dependent. The Individual's conflicting descriptions of his alcohol consumption, the DWI he received in 1994, his elevated liver enzyme levels, his admission that he regularly consumed alcohol while behind the wheel and on hunting trips, his admission that he has developed a tolerance for alcohol, and his determination to continue drinking despite his doctor's warning that it might worsen his gout all convince me that the Psychiatrist properly diagnosed the Individual with alcohol dependence.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. See *Personnel Security Hearing (Case No. VSO- 0244)*, 27 DOE ¶ 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (1998) (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment whether the individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, I must consider whether the Individual has submitted sufficient evidence of his rehabilitation and reformation to resolve the security concerns raised by his alcohol dependence.

In the present case, this is not a difficult determination. The Individual has steadfastly refused to acknowledge that he has a problem with alcohol and he continues to use alcohol. Therefore, there is no evidence in the record indicated that the Individual has been rehabilitated or reformed. Accordingly, the Individual has failed to mitigate the concerns raised by his alcohol use and the Psychiatrist's diagnosis of alcohol dependence.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criteria J and H. Therefore, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization should not

be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: January 7, 2004